

Amendment No. 387

Senate Amendment to Senate Bill No. 278	(BDR 32-290)
Proposed by: Senate Committee on Revenue and Economic Development	
Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes	

ASSEMBLY ACTION			Initial and Date	SENATE ACTION			Initial and Date		
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.



SENATE BILL NO. 278—SENATOR SPEARMAN

MARCH 14, 2023

Referred to Committee on Revenue and
Economic Development

SUMMARY—Revises provisions governing child care. (BDR 32-290)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to child care; authorizing an employer to receive a credit against the payroll taxes imposed on the employer if the employer provides certain financial assistance to employees for child care; requiring the Division of Public and Behavioral Health of the Department of Health and Human Services to make available to businesses in this State information related to worksite wellness and family-friendly policies; ~~exempting certain persons who provide care for the children of friends and neighbors from regulation as child care facilities;~~ and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law imposes a tax, commonly known as the modified business tax, on financial institutions and other businesses based on the amount of wages paid to employees each calendar quarter. (NRS 363A.130, 363B.110) **Sections 1-4** of this bill entitle an employer to receive a credit against the modified business tax if the employer pays money to ~~the Division of Welfare and Supportive Services of the Department of Health and Human Services;~~ a licensed child care facility or a registered small child care establishment for the purpose of providing child care assistance to an employee. To qualify for the credit, the employee for whom the assistance is provided must: (1) have a household income that does not exceed ~~85~~ 150 percent of the median household income in this State; (2) ~~be determined eligible by the Division for the Program for Child Care and Development;~~ use the assistance for the purpose of providing child care to a dependent child who is less than 13 years of age; ~~(3) select a provider of child care who participates in or is eligible for the Quality Rating and Improvement System;~~ Program for Child Care and Development administered by the ~~Office of Early Learning and Development of the Department of Education;~~ Division of Welfare and Supportive Services of the Department of Health and Human Services; and ~~(4) pay directly to the provider of child care any portion of the cost of the child care that is not covered by the employer. Sections 1 and 3 of this bill require the Division to, either quarterly or as requested, submit to the Department of Taxation a list of providers of child care who participate in or are eligible for the Program for Child Care and Development.~~ Under sections 1 and 3 : ~~of this bill;~~ (1) the amount of the credit is equal to 50 percent of the amount paid by the employer to the Division for the cost of child care, but the amount of the credit must not exceed \$5,000 per employee per year; and (2) any unused credits may be carried forward for 5 years. To claim the tax credit, **sections 1 and 3** require

the employer to apply to the ~~[Division and, upon receipt of the application and determining that the employer is qualified for the credit, the Division is required to apply to the Department of Taxation for approval of the credit. If the Department of Taxation approves the application, the Division is required to notify: (1) the taxpayer of the approval of the credit; and (2) the Department of Taxation of payments made to the Division by the taxpayer within 30 days after receipt of the payment.]~~ **Department of Taxation.** Finally, **sections 1 and 3** limit the total amount of credit which may be awarded to taxpayers to: (1) for Fiscal Years 2023-2024 and 2024-2025, \$5,000,000 and \$5,500,000, respectively; and (2) for subsequent fiscal years, an amount equal to 110 percent of the amount authorized for the immediately preceding fiscal year.

Section 5 of this bill requires the Division of Public and Behavioral Health of the Department of Health and Human Services to make available to businesses in this State information concerning worksite wellness and family-friendly policies, including, without limitation, information concerning the tax credits established by **sections 1 and 3**.

~~[Existing law provides for the licensure of child care facilities, which are defined as: (1) an establishment operated and maintained for the purpose of furnishing care to five or more children for compensation; (2) certain facilities operated by a place of business to provide care for the children of its employees; (3) a child care institution; or (4) an outdoor youth program. (NRS 432A.024, 432A.0275, 432A.131-432A.220) Section 6 of this bill revises that definition to provide that a home in which a person provides care for six or fewer children of a friend or neighbor, or a combination thereof, is not deemed a child care facility and, thus, is not subject to licensure requirements under existing law.]~~

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 363A of NRS is hereby amended by adding thereto a new section to read as follows:

1. *Except as otherwise provided in subsection 2, any taxpayer who is required to pay the excise tax imposed pursuant to NRS 363A.130 may receive a credit against the tax otherwise due based on the amount paid by the employer to ~~the Division~~ a child care facility that is licensed pursuant to NRS 432A.131 or a small child care establishment registered pursuant to NRS 432A.1756 for the purpose of assisting an employee who meets the qualifications of subsection 3 in paying for the cost of child care.*

2. *No amount paid by an employer for the cost of child care pursuant to subsection 1 may qualify for the credit authorized by that subsection if the amount was paid pursuant to a salary reduction plan.*

3. *To receive the credit authorized by subsection 1, an employee for whom the taxpayer provides assistance in paying for the cost of child care must:*

(a) *Have a household income that does not exceed ~~85~~ 150 percent of the median household income in this State;*

(b) ~~[Be determined eligible by the Division for the Program for Child Care and Development, as defined in NRS 422A.055;~~

~~—(c)] Use the assistance for ~~a~~ :~~

~~—(1) A dependent child who is less than 13 years of age; or~~

~~—(2) A dependent child with special needs who is less than 19 years of age;~~

~~—(d)] (c) Select a provider of child care who participates in ~~the Quality Rating and Improvement System administered by the Office of Early Learning and Development of the Department of Education~~]~~ or is eligible for the Program for Child Care and Development administered by the Division; and

~~—(e)] (d) Pay directly to the provider of child care any portion of the cost of the child care not paid by the taxpayer.~~

4. To receive the credit authorized by subsection 1, a taxpayer must apply to the ~~[Division]~~ Department in the manner prescribed by the ~~[Division]~~ Department. The ~~[Division]~~ Department shall use the application to verify the taxpayer's intent to qualify for the credit authorized by subsection 1. Upon receipt of the application, the ~~[Division]~~ Department, after determining that the requirements of subsections 2 and 3 are satisfied, shall ~~apply to the Department of Taxation for approval of the credit authorized by subsection 1. The Department of Taxation shall, within 20 days after receiving an application, approve or deny the application and provide to the Division notice of the decision and, if the application is approved, the amount of the credit authorized. Upon receipt of the notice from the Department of Taxation, the Division shall provide notice of the approval to the taxpayer. If the taxpayer does not make the payment for the cost of child care to the Division pursuant to subsection 1 within 30 days after receiving the notice, the Division shall provide notice of the failure to the Department of Taxation and the taxpayer forfeits any claim to the credit authorized by subsection 1.~~

~~5. Upon receipt of a payment from a taxpayer who received a notice of approval, the Division shall:~~

~~(a) Provide notice of the payment to the Department of Taxation within 30 days after receipt of the payment; and~~

~~(b) Transfer the payment received from the taxpayer directly to the provider of child care.~~

~~6. The Department of Taxation shall~~ approve or deny an application for the credit authorized by subsection 1 in the order in which such applications are received. The Department may, for each fiscal year, approve applications for the credits authorized by subsection 1 and subsection 1 of section 3 of this act in an amount not to exceed:

(a) For Fiscal Year 2023-2024, \$5,000,000;

(b) For Fiscal Year 2024-2025, \$5,500,000; and

(c) For each succeeding fiscal year, an amount equal to 110 percent of the amount authorized for the immediately preceding fiscal year.

~~[7.]~~ 5. If a taxpayer applies for and is approved for a credit authorized by subsection 1, the amount of the credit is equal to the amount approved by the Department of Taxation, which must not exceed the lesser of:

(a) Fifty percent of the amount paid to the Division during the calendar quarter for which the tax is due, for the purpose of assisting an employee who meets the qualifications set forth in subsection 3 in paying for the cost of child care; or

(b) Five thousand dollars per employee per year.

~~[8.]~~ 6. A credit described in this section must not be applied retroactively.

~~[9.]~~ 7. If the amount of a credit described in this section exceeds the tax liability of the taxpayer for the calendar quarter in which the credit is claimed, the excess amount of the credit may be carried forward and applied to the tax liability of the taxpayer for the next following calendar quarter or calendar quarters for which the taxpayer has a tax liability, except that any credit or the excess amount of any credit expires on the date that is 5 years after the end of the calendar quarter in which the credit is claimed and must not be applied to any tax liability of the taxpayer incurred on or after that date. If excess amounts of credits for more than one calendar quarter are carried forward by a taxpayer pursuant to this subsection, the excess amount of the credit from the earliest calendar quarter must be applied first.

8. The Division shall quarterly, or as requested, provide to the Department a list of providers of child care who satisfy the requirements of paragraph (c) of subsection 3.

~~10.7~~ 9. As used in this section, "Division" means the Division of Welfare and Supportive Services of the Department of Health and Human Services.

Sec. 2. NRS 363A.130 is hereby amended to read as follows:

363A.130 1. Except as otherwise provided in NRS 360.203, there is hereby imposed an excise tax on each employer at the rate of 2 percent of the wages, as defined in NRS 612.190, paid by the employer during a calendar quarter with respect to employment in connection with the business activities of the employer.

2. The tax imposed by this section:

(a) Does not apply to any person or other entity or any wages this State is prohibited from taxing under the Constitution, laws or treaties of the United States or the Nevada Constitution.

(b) Must not be deducted, in whole or in part, from any wages of persons in the employment of the employer.

3. Each employer shall, on or before the last day of the month immediately following each calendar quarter for which the employer is required to pay a contribution pursuant to NRS 612.535:

(a) File with the Department a return on a form prescribed by the Department; and

(b) Remit to the Department any tax due pursuant to this section for that calendar quarter.

4. In determining the amount of the tax due pursuant to this section, an employer is entitled to subtract from the amount calculated pursuant to subsection 1 a credit in an amount equal to 50 percent of the amount of the commerce tax paid by the employer pursuant to chapter 363C of NRS for the preceding taxable year. The credit may only be used for any of the 4 calendar quarters immediately following the end of the taxable year for which the commerce tax was paid. The amount of credit used for a calendar quarter may not exceed the amount calculated pursuant to subsection 1 for that calendar quarter. Any unused credit may not be carried forward beyond the fourth calendar quarter immediately following the end of the taxable year for which the commerce tax was paid, and a taxpayer is not entitled to a refund of any unused credit.

5. An employer who makes a donation of money to a scholarship organization during the calendar quarter for which a return is filed pursuant to this section is entitled, in accordance with NRS 363A.139, to a credit equal to the amount authorized pursuant to NRS 363A.139 against any tax otherwise due pursuant to this section. As used in this subsection, "scholarship organization" has the meaning ascribed to it in NRS 388D.260.

6. An employer who, during the calendar quarter for which a return is filed pursuant to this section, makes a payment of money which qualifies for a credit pursuant to section 1 of this act is entitled to a credit equal to the amount authorized pursuant to section 1 of this act against any tax otherwise due pursuant to this section.

Sec. 3. Chapter 363B of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in subsection 2, any taxpayer who is required to pay the excise tax imposed pursuant to NRS 363B.110 may receive a credit against the tax otherwise due based on the amount paid by the employer to [the Division] a child care facility that is licensed pursuant to NRS 432A.131 or a small child care establishment that is registered pursuant to NRS 432A.1756 for

1 the purpose of assisting an employee who meets the qualifications of subsection 3
2 in paying for the cost of child care.

3 2. No amount paid by an employer for the cost of child care pursuant to
4 subsection 1 may qualify for the credit authorized by that subsection if the
5 amount was paid pursuant to a salary reduction plan.

6 3. To receive the credit authorized by subsection 1, an employee for whom
7 the taxpayer provides assistance in paying for the cost of child care must:

8 (a) Have a household income that does not exceed ~~185~~ 150 percent of the
9 median household income in this State;

10 (b) ~~Be determined eligible by the Division for the Program for Child Care~~
11 ~~and Development, as defined in NRS 422A.055;~~

12 ~~—(c)— Use the assistance for ~~a~~ :~~

13 ~~—(1) A dependent child who is less than 13 years of age; or~~

14 ~~—(2) A dependent child with special needs who is less than 19 years of age;~~

15 ~~—(d) (c) Select a provider of child care who participates in the Quality~~
16 ~~Rating and Improvement System administered by the Office of Early Learning~~
17 ~~and Development of the Department of Education; or is eligible for the Program~~
18 ~~for Child Care and Development administered by the Division; and~~

19 ~~—(e)— (d) Pay directly to the provider of child care any portion of the cost of~~
20 ~~child care not paid by the taxpayer.~~

21 4. To receive the credit authorized by subsection 1, a taxpayer must apply to
22 the ~~Division~~ Department in the manner prescribed by the ~~Division~~ Department.
23 The ~~Division~~ Department shall use the application to verify the
24 taxpayer's intent to qualify for the credit authorized by subsection 1. Upon receipt
25 of the application, the ~~Division~~ Department, after determining that
26 the requirements of subsections 2 and 3 are satisfied, shall ~~apply to the Department~~
27 ~~of Taxation for approval of the credit authorized by subsection 1. The~~
28 ~~Department of Taxation shall, within 20 days after receiving an application,~~
29 ~~approve or deny the application and provide to the Division notice of the decision~~
30 ~~and, if the application is approved, the amount of the credit authorized. Upon~~
31 ~~receipt of the notice from the Department of Taxation, the Division shall provide~~
32 ~~notice of the approval to the taxpayer. If the taxpayer does not make the payment~~
33 ~~to the Division within 30 days after receiving the notice, the Division shall~~
34 ~~provide notice of the failure to the Department of Taxation and the taxpayer~~
35 ~~forfeits any claim to the credit authorized by subsection 1.~~

36 ~~5. Upon receipt of a payment from a taxpayer who received a notice of~~
37 ~~approval, the Division shall:~~

38 ~~—(a) Provide notice of the payment to the Department of Taxation within 30~~
39 ~~days after receipt of the payment; and~~

40 ~~—(b) Transfer the payment received from the taxpayer directly to the provider~~
41 ~~of child care.~~

42 ~~6. The Department of Taxation shall~~ approve or deny an application for
43 the credit authorized by subsection 1 in the order in which such applications are
44 received. The Department may, for each fiscal year, approve applications for the
45 credits authorized by subsection 1 and subsection 1 of section 1 of this act in an
46 amount not to exceed:

47 (a) For Fiscal Year 2023-2024, \$5,000,000;

48 (b) For Fiscal Year 2024-2025, \$5,500,000; and

49 (c) For each succeeding fiscal year, an amount equal to 110 percent of the
50 amount authorized for the immediately preceding fiscal year.

51 ~~7. 5.~~ 5. If a taxpayer applies for and is approved for a credit authorized by
52 subsection 1, the amount of the credit is equal to the amount approved by the
53 Department of Taxation, which must not exceed the lesser of:

(a) Fifty percent of the amount paid to the Division during the calendar quarter for which the tax is due, for the purpose of assisting an employee who meets the qualifications set forth in subsection 3 in paying for the cost of child care; or

(b) Five thousand dollars per employee per year.

~~6.7~~ 6. A credit described in this section must not be applied retroactively.

~~6.7~~ 7. If the amount of a credit described in this section exceeds the tax liability of the taxpayer for the calendar quarter in which the credit is claimed, the excess amount of the credit may be carried forward and applied to the tax liability of the taxpayer for the next following calendar quarter or calendar quarters for which the taxpayer has a tax liability, except that any credit or the excess amount of any credit expires on the date that is 5 years after the end of the calendar quarter in which the credit is claimed and must not be applied to any tax liability of the taxpayer incurred on or after that date. If excess amounts of credits for more than one calendar quarter are carried forward by a taxpayer pursuant to this subsection, the excess amount of the credit from the earliest calendar quarter must be applied first.

8. The Division shall quarterly, or as requested, provide to the Department a list of providers of child care who satisfy the requirements of paragraph (c) of subsection 3.

~~10.7~~ 9. As used in this section, "Division" means the Division of Welfare and Supportive Services of the Department of Health and Human Services.

Sec. 4. NRS 363B.110 is hereby amended to read as follows:

363B.110 1. Except as otherwise provided in NRS 360.203, there is hereby imposed an excise tax on each employer at the rate of 1.475 percent of the amount by which the sum of all the wages, as defined in NRS 612.190, paid by the employer during a calendar quarter with respect to employment in connection with the business activities of the employer exceeds \$50,000.

2. The tax imposed by this section:

(a) Does not apply to any person or other entity or any wages this State is prohibited from taxing under the Constitution, laws or treaties of the United States or the Nevada Constitution.

(b) Must not be deducted, in whole or in part, from any wages of persons in the employment of the employer.

3. Each employer shall, on or before the last day of the month immediately following each calendar quarter for which the employer is required to pay a contribution pursuant to NRS 612.535:

(a) File with the Department a return on a form prescribed by the Department; and

(b) Remit to the Department any tax due pursuant to this chapter for that calendar quarter.

4. In determining the amount of the tax due pursuant to this section, an employer is entitled to subtract from the amount calculated pursuant to subsection 1 a credit in an amount equal to 50 percent of the amount of the commerce tax paid by the employer pursuant to chapter 363C of NRS for the preceding taxable year. The credit may only be used for any of the 4 calendar quarters immediately following the end of the taxable year for which the commerce tax was paid. The amount of credit used for a calendar quarter may not exceed the amount calculated pursuant to subsection 1 for that calendar quarter. Any unused credit may not be carried forward beyond the fourth calendar quarter immediately following the end of the taxable year for which the commerce tax was paid, and a taxpayer is not entitled to a refund of any unused credit.

5. An employer who makes a donation of money to a scholarship organization during the calendar quarter for which a return is filed pursuant to this section is entitled, in accordance with NRS 363B.119, to a credit equal to the amount authorized pursuant to NRS 363B.119 against any tax otherwise due pursuant to this section. As used in this subsection, "scholarship organization" has the meaning ascribed to it in NRS 388D.260.

6. An employer who, during the calendar quarter for which a return is filed pursuant to this section, makes a payment of money which qualifies for a credit pursuant to section 3 of this act is entitled to a credit equal to the amount authorized pursuant to section 3 of this act against any tax otherwise due pursuant to this section.

Sec. 5. Chapter 432A of NRS is hereby amended by adding thereto a new section to read as follows:

The Division shall make available for businesses in this State information related to worksite wellness and family-friendly policies, including, without limitation, information concerning the tax credit authorized by sections 1 and 3 of this act.

Sec. 6. ~~NRS 432A.024 is hereby amended to read as follows:~~

~~432A.024 1. "Child care facility" means:~~

~~(a) An establishment operated and maintained for the purpose of furnishing care on a temporary or permanent basis, during the day or overnight, to five or more children under 18 years of age, if compensation is received for the care of any of those children;~~

~~(b) An on site child care facility;~~

~~(c) A child care institution; or~~

~~(d) An outdoor youth program.~~

~~2. "Child care facility" does not include:~~

~~(a) The home of a natural parent or guardian, foster home as defined in NRS 424.014 or maternity home;~~

~~(b) A home in which the only children received, cared for and maintained are related within the third degree of consanguinity or affinity by blood, adoption or marriage to the person operating the facility;~~

~~(c) A home in which a person provides care for [the]:~~

~~(1) The children of a friend or neighbor for not more than 4 weeks if the person who provides the care does not regularly engage in that activity; or~~

~~(2) Six or fewer children of a friend or neighbor, or any combination thereof;~~

~~(d) A location at which an out of school time program is operated;~~

~~(e) A seasonal or temporary recreation program;~~

~~(f) An out of school recreation program; or~~

~~(g) A receiving center, as defined in NRS 424.0175.] (Deleted by amendment.)~~

Sec. 7. 1. This section becomes effective upon passage and approval.

2. Sections 1 to 6, inclusive, of this act become effective:

(a) Upon passage and approval for the purpose of adopting any regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and

(b) On January 1, 2024, for all other purposes.